

**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF MISSOURI**

**RONALD TUSSEY, et al.,**

**Plaintiffs,**

**v.**

**ABB, INC., et al.,**

**Defendants.**

**CIVIL ACTION NO. 06-cv-04305-NKL**

**(Judge Nanette K. Laughrey)**

**DEFENDANTS' JOINT REPLY TO PLAINTIFFS' ARGUMENT ON  
SUPPLEMENTAL AUTHORITY**

In response to Defendants' two-sentence Notice of Supplemental Authority (Dkt. # 618), tendering the Seventh Circuit's recent decision in *Loomis v. Exelon Corp.*, 2011 WL 3890453 (7<sup>th</sup> Cir. Sept. 6, 2011), Plaintiffs have reargued in summary form a series of factual assertions that appear in their post-trial briefs. *E.g.*, Plaintiffs' Response (Dkt. # 619) at 2 ("kickbacks influenced the selection of the plan's investment options"); *id.* ("excessive fees" allowed "in order to receive below market, discounted, and free corporate services"). In fact, as the Defendants' post-trial briefs make clear, Plaintiffs have proved none of these factual assertions. Defendants' post-trial submissions provide a detailed review of the actual evidence on these points (*see* Dkt. #552 at ¶¶17-118), and Defendants respectfully direct the Court to those prior submissions.

Dated: September 21, 2011

Respectfully Submitted,

/s/ *Richard N. Bien*

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## **CERTIFICATE OF SERVICE**

I hereby certify that on this 21st day of September, 2011, the foregoing was filed and service made by the Court's Electronic Case Filing (ECF) system to:

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